HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1644 of 2002 (S/B)

Smt. Leela Koranga

vs.

Milk Commissioner Dairy Development & ors.

Approved for reporting

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~~Not approved for reporting~~

Date of decision 6.5.2004.

Initial of Judge

In the High Court of Uttaranchal at Nainital.
Civil Misc. Writ Petition No. 1644(S.B)/2002

Smt. Leela Koranga ……Petitioner.

Vs.

Milk Commissioner Government
of Uttaranchal Dehradun and 6 others .Respondents.

Sri B.S.Khanka, and Sri M.C.Kandpal learned counsel for the petitioners.

Sri V.K.Bisht learned counsel for the respondents.

Date of Judgment: 6-5-2004

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has challenged the order dated 8-7-2002 by which the services of the petitioner have come to an end by reason of the project having been closed from 14th of June 2002.

2. Brief facts giving rise to the present writ petition are that the petitioner worked as secretary in Dugdh Utpadak Sahkari Sangh Samiti Khamia from 1994 to 1996. The petitioner was appointed on the post of field supervisor on contract basis on a fix remuneration of Rs. 2000/- per month vide appointment letter dated 23.9.96. Thereafter the petitioner was given fix remuneration of Rs. 2500/-, Rs.s 2600/0 and Rs. 3000/- with 200/0 travelling allowance vide orders dated 30-8-1997, 28-2-1998 and 16-5-1998 respectively.

3- As will appear from the aforesaid facts that the petitioner was continuing as field supervisor from time to time. On 28th December 1998 the petitioner was sent on deputation with the Gramin Parivar Kalyan Pariyojna and was directed to undergo training for one week and thereafter directed to work as Health Supervisor. The copy of the order is quoted below:-

आदेश

ग्रामीण परिवार कल्याण परियोजना के कार्यो के सफल सम्पादन हेतु दुग्ध संघ नैनीताल/ उधमसिंह नगर में तैनात फिल्ड पर्यवेक्षकाओं को अग्रिम आदेश तक ग्रामीण

परिवार कल्याण परियोजना से सम्बद्ध किया जाता है, जहां पर वे प्रशिक्षण के उपरान्त स्वास्थ्य पर्यवेक्षिका के रूप में ग्रामीण परिवार कल्याण परियोजना में कार्य करेगी। दिनांक 03.01.99 से होने वाली एक सप्ताह के प्रषिक्षण में समस्त फिल्ड पर्यवेक्षिकाओं मण्डलीय प्रशिक्षण केन्द्र मोतीनगर (हल्द्वानी) में भाग लेगी।

क्रमांक	नाम	पद
1	श्रीमती गीता जोशी	फील्ड पर्यवेक्षिका
2	कुमारी किरन सम्भल	''
3	कुमारी लीला कोरंगा	''
4	श्रीमती पुष्पा पाण्डे	::
5	श्रीमती मॅजू गोस्वामी	''
6	श्रीमती पुष्पा देबी	''

4- The petitioner has stated that the Pariyojna of Gramin Parivar Kalyan is run by the world bank and ultimately the Yojna was closed as will appear from the order itself dated 8th July 2002. The copy of the said order is reproduced as under:-

ग्रामीण परिवार परियोजना– नैनीताल।

आदेश

सामान्य प्रबन्धक (ग्रा0से0) सिफमा के कार्यालय पंत्राक सिफमा रु पी0वी0टी0/96–97/एस 99 जून 25, 2002 के व्दारा एवं दुगधशााला विकास अधिकारी उ0प्र0, राज्य दुग्ध परिषद के पत्राक 176/दु0परि0/सिफसा/दिनांक 14 जून 2003 के व्दारा ग्प्र0प0क0 परि0 दुग्ध संघ की अनुबन्धित अवधि दिनांक 8–7–2002 को समाप्त होने के कारण बन्द की जा रही है। उपरोक्त आदेश के क्रम में ग्रा0प0क0में कार्यरत समस्त कार्मिको (वी0एच0वी0, स्वा0 पर्यवेक्षिकाष् सहायक परि0सम0ष् एम0आई0एस0, सहयोगी) की उ0प्र0 राज्य दुग्ध परिषद लखनउ से किये गये अनुबन्ध के अनुसार सेवायें दिनांक 9–7–2002 से स्वतः ही समाप्त हो जाती है। उक्त अवधि उपरान्त किसी भी कर्मचारी को किसी प्रकार का मानदेय देय नहीं होगा।''

5- The petitioner has submitted that they were employed as a field supervisor of Udham Singh Nagar Dugdh Utpadak Sahkari Sangh Ltd and since she was sent on deputation on 18-12-2002 with the Parivar Kalyan Yojna, and at the close of the Pariyojana she should have been sent back to her parent department. The petitioner has submitted that on the basis of the letter dated 6th May 1997 the General Manager

Nainital, Dugdh Utpadak Sahkari Sangh Lalkuan Nainital has adjusted to 42 field supervisors in the district Nainital and Udham Singh Nagar as will appear from the order Annexure-11 and as such since the work is going on, the petitioner should have been sent back and adjusted after the closer of the Pariyojana. The list of the said persons has been annexed as Annexure-11 to the writ petition. However the context of the order is reproduced as under:-

''आदेश

बर्तमान समय में नैनीताल दुग्ध संघ लालकुँआ में कार्यरत फील्ड पर्यवेक्षक/ फील्ड सहायक को सँघ हित में दुग्ध संघ के कार्यक्षेत्र में निम्नवत तैनात किया जाता है तथा निर्देशित किया जाता है कि वह तत्काल तुरन्त प्रभाव से नव नियुक्त स्थान पर अपना योगदान देना सुनिश्चित करें तथा एक सप्ताह के भीतर अपने निवास के पत्ते को लिखित सूचना प्रभारी (एफ0कओ0) एण्ड ए0एच0 एवं अधोहस्ताक्षदी को देना सुनिश्चित करें।''

6- The petitioner has stated that they have given a representation in the regard but the same has not been considered at all.

7- A counter affidavit has been filed by the respondents and in paragraph-4 it has been stated that the engagement of the petitioner as field supervisor under Nainital Dugdh Utpadak Sahkari Sangh Ltd. Lalkuan was on consolidated salary on contract basis and their engagement was extended from time to time. However it has been stated that the petitioner have been relieved from the Pariyojana. Further in paragraph no. 14 of the counter affidavit following averments have been made:-

> *"That in reply to paragraph 13 of the writ petition it is stated that vide order dated 29-12-1998 the petitioners were relieved from the pariyojana. This letter never meant that petitioners were being relieved from Dugdh Utpadak Sahkari Sangh Ltd,. Rudrapur as regular employees."*

8- As will appear from paragraph no.14 of the counter affidavit that it was never intended that the petitioner was being relieved from Dugdh Utpadak Sahkari Sangh , Rudrapur as regular employees.

Petitoner has filed rejoinder affidavit and in paragraph -5 of the rejoinder affidavit she has stated that since the petitioner was appointed with the Dugdh Utpadak Sahkari Sangh Ltd. and the Dugdh Utpadak Sahkari Sangh Ltd. has sent the petitioner on deputation under the Gramin Parivar Kalyan Pariyojna and her services can not be treated to have ceased and she was required to be sent back to her parent department.

9- Right to work has been held to be fundamental right under Articles 41 and 42 of the Constitution of India. The same are quoted below:-

> *"41. Right to work, to education and to public assistance in certain cases. – The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of underserved want.*
>
> *42. Provision of just and humane conditions of work and maternity relief. – The State shall make provision for securing just and humane conditions of work and for maternity relief."*

10- The aforesaid Articles 41 and 42 have also been taken into consideration in the case of Indra Pal Yadav and others (Supra) by the Apex Court.

11- The petitioner has also referred the judgment reported in *(1985) 2 S.C.C. 648 (Inder Pal Lyadav and others Vs. Union of India and others)*. Paragraphs 1 and 6 of the observations are quoted below:-

> *"Articles 41 and 42 of the Constitution notwithstanding, there are certain grey areas where the rule of hire and fire, a legacy of laissez faire, even in Government employment still rules the roost. Casual labour employed on projects also known as*

'project casual labour' is one such segment of employment where one may serve for years and remain a daily-rated worker without a weekly off, without any security of service, without the protection of equal pay for equal work. In short at the sweet will and mercy of the local satraps. Even the formidable railwaymen's unions least cared for these helpless and hapless workmen. Suddenly on torrent of writ petitions and petitions for special leave awakened this Court to the plight of these workmen. In quick succession, 48 writ petitions and 32 petitions for special leave flooded this Court. In each writ petition/Special Leave Petition, the grievance was that even though the workmen styled as 'project casual labour' had put in continuous service for years on end to wit ranging from 1974 till 1983, yet their services were terminated with impunity under the specious plea that the project on which they were employed has been wound up on its completion and their services were no more needed."

6. To avoid violation of Article 14, the scientific and equitable way of implementing the scheme is for the Railway administration to prepare, a list of project casual labour with reference to each division of each railway and then start absorbing those with the longest service. If in the process any adjustments are necessary, the same must be done. In giving this direction, we are considerably influenced by the statutory recognition of a principle well known in industrial jurisprudence that the men will longest service shall have priority over those who have joined lateron. In other words, the principle of last come first go or to reverse it first come last go as enunciated in section 25-G of the Industrial Disputes Act, 1947 has been accepted. We direct accordingly."

12- In *Kumari Shrilekha Vidyarthi etc. etc. Vs. State of U.P. and others A.I.R. 1991 Supreme Court 537* the Apex Court has taken into consideration that even where there is a contract of service application

of mind is required as to whether the services of the petitioners have to be continued or not. The observations made are under:-

> *"28. Even assuming that it is necessary to import the concept of presence of some public element in State action to attract Art. 14 and permit judicial review, we have no hesitation in saying that the ultimate impact of all actions of the State or a public body being undoubtedly on public interest, the requisite public element for this purpose in present also in contractual matters. We, therefore, find it difficult and unrealistic to exclude the State actions in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Art.14.*
>
> *29. It can no longer be doubted at this point of time that Art. 14 of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satislfy the test of reasonableness, it would be unconstitution. (See Ramana Dayaram Shetty V . The Internation Airport Authority of India (1979) 3 SCR 1014: (AIR 1979 SC 1628) and Kasturi Lal Lakshmi Reddy Vs. state of Jammu and Kashmir (1980) 3 SCR 1338: (AIR 1980 SC 1992). In Col. A>S. Sangwan v. Union of India, 1980 (Supp) SCC 559: (AIR 1981 SC 1545), while the discretion to change the policy in exercise of the executive power, when no tramelled by the statute or rule, was held to be wide, it has emphasized as imperative and implicit in Art. 14 of the Constitution that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Art. 14 and the requirement of every State action qualifying for its validity on this touch-stone, irrespective of the field of activity of the State, has long been settled. Later decisions of this Court have reinforced the foundation of this tenet and it*

would be sufficient to refer only to two recent decisions of this Court for this purpose.

"…...Where there is arbitrariness in State action, Art. 14 springs in and judicial review strikes such an action down. Every action of the executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, it should meet the test of Art. 14…."

13- Admittedly the petitioner was employed as a field supervisor on contract basis and according to both the parties the said contract was being extended from time to time and assuming that the Pariyojana came to an end even then the petitioner should have been considered by their parent department as to whether they are required or not. Petitioner also made a representation and said representation is still pending.

14- Although there is no lien of the petitioner in her parent department because they were working on contract basis only but before passing the order that the work of the petitioner have ceased, the petitioner should have sent to parent department.

15- Admittedly petitioner was initially appointed as field supervisor in the services of the respondent no.2, the respondent no.2 is the best person to consider the continuation of the petitioner. Since the respondent no.2 has not yet considered the claim of the petitioner whereas the attachment having ceased to take effect by reason of the project having been completed on 14.6.2002, the respondent no.2 therefore should have considered afresh with regard to the continuation of the petitioner as the case may be after considering the same a by way of reasoned order considering the representation of the petitioner.

16- In view of the aforesaid observations the writ petition is disposed and the matter is remitted back to the parent department for passing appropriate orders. Liberty is given to the parent department to pass appropriate orders considering the exigency and suitability of

the petitioner. Orders may be passed within six weeks after filing of the certified copy of this order. No order as to costs.

(Rajesh Tandon, J.)